IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION

CHIMNEY INVESTMENTS, LTD.,	§	
	§	
Plaintiff,	§	
	§	
V.	§	
	§	CIVIL ACTION NO. 4:14cv-01664
AMERICAN DRIVELINE CENTERS,	§	
INC., JEFFREY YOE, and SCOTT	§	
AQUINO	§	
•	§	
Defendants.	8	
	§	

DEFENDANT AMERICAN DRIVLINE CENTERS, INC.'S FIRST AMENDED ANSWER TO PLAINTIFF'S ORIGINAL PETITION

Defendant American Driveline Centers, Inc. ("Defendant") files its First Amended Answer to Plaintiff's Original Petition (previously filed in State Court and then removed) showing the Court the following:

I. DISCOVERY CONTROL PLAN

1. The text of Paragraph 1 does not include allegations to be admitted or denied.

II. PARTIES

- 2. The text of Paragraph 2 does not include allegations to be admitted or denied.
- 3. Defendant admits the allegations in Paragraph 3.
- 4. The text of Paragraph 4 does not include allegations to be admitted or denied.
- 5. The text of Paragraph 5 does not include allegations to be admitted or denied.

II. VENUE AND JURISDICTION

- 6. Defendant admits the allegations in Paragraph 6.
- 7. Defendant admits the allegations in Paragraph 7.

III. RULE 47 STATEMENT

8. Despite the fact that Texas Rule of Civil Procedure 47 has no application in this Court, Defendant admits that this is a breach of contract case and that Plaintiff's purported damages are within the jurisdictional limits of the Court. Defendant otherwise denies the allegations in Paragraph 8.

IV. FACTUAL BACKGROUND

- 9. Defendant admits the allegations in Paragraph 9.
- 10. Defendant admits the allegations in Paragraph 10.
- 11. Defendant admits the allegations in Paragraph 11.
- 12. Defendant admits the allegations in Paragraph 12.
- 13. Defendant admits that Plaintiff made demand and that Defendant has failed to satisfy that demand. Defendant otherwise denies the allegations in Paragraph 13.

V. <u>SUIT TO ENFORCE THE LEASE AND GUARANTY</u>

14. Defendant admits that Plaintiff has filed this lawsuit seeking the amounts first stated in the demand referenced in Paragraph 13 above. Defendant otherwise denies the allegations in Paragraph 14.

VI. ATTORNEYS' FEES

- 15. The text of Paragraph 15 does not include allegations to be admitted or denied.
- 16. The text of Paragraph 16 does not include allegations to be admitted or denied.

VII. CONDITION PRECEDENT

17. Defendant denies the allegations in Paragraph 17.

VIII. REQUEST FOR DISCLOSURE

18. The text of Paragraph 18 does not include allegations to be admitted or denied.

IX. RELIEF REQUESTED

Defendant denies that Plaintiff is entitled to all the relief requested.

AFFIRMATIVE DEFENSES

1. Plaintiff's claims fail in whole or in part because of its own failure to mitigate damages.

Respectfully submitted,

CHERRY PETERSEN LANDRY ALBERT LLP

By: /s/ Craig A. Albert

Craig A. Albert

Texas Bar No. 00790076

Email: calbert@cplalaw.com

Jennifer W. Knott

Texas Bar No. 24027420

Email: jknott@cplalaw.com

8350 North Central Expressway, Suite 1500 Dallas, Texas 75206 (214) 265-7007 Telephone (214) 265-7008 Facsimile

GODSEY-MARTIN, P.C.

Allison Haver Gabbert 2550 North Loop West, Suite 102 Houston, Texas 77092 Telephone: (713) 446-8448

ATTORNEYS FOR DEFENDANT AMERICAN DRIVELINE CENTERS, INC.

CERTIFICATE OF SERVICE

I hereby certify that on September 15, 2014, I electronically filed the foregoing document with the Clerk of Court for the U.S. District Court, Southern District of Texas, using the CM/ECF system of the Court.

/s/ Craig A. Albert	
Craig A. Albert	